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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

08/27/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/565,892	Applicant(s) LEWIS ET AL.	
	Examiner Brent T. O'Hern	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41-57, 62 and 64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41-57, 62 and 64 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/2/2008, 8/14/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Claims 41-57, 62 and 64 are pending with claim 64 new.

WITHDRAWN REJECTIONS

2. All rejections of record in the Office Action mailed 2 January 2008, pages 3-12, paragraphs 8-18 have been withdrawn due to Applicant's amendments in the Paper filed 2 July 2008.

NEW OBJECTIONS

Specification

3. The specification is objected to as failing to provide proper **antecedent basis** for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the phrases "having said upper member on a top side of said shower tray and said lower member on an underside of said shower tray, said upper member being spaced from said lower member to define a gap therebetween, and an inner core of filler extending throughout said shell between said upper member and said lower member to fill said gap to provide strength and rigidity to the shower tray" in claim 41, lines 4-8, "to support the entire floor of said well, and wherein said lower member is provided with a means for releasing air from said gap" in claim 41, lines 12-14, "separating said upper and lower members whereby the core extends below and supports said upper member throughout said floor, and wherein said lower member is provided with holes" in claim 62, line 4-6 and "upper wall and well of said shower tray with said core providing strength and rigidity to said shower tray throughout

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said side wall, upper wall and well, and said lower member being provided with holes on an underside of said shower tray” in claim 64, lines 6-9 are not supported by the text of the Specification. Applicant is advised to consider amending the text of the Specification to include limitations from the figures while being careful not to add new matter.

Claim Objections

4. Claims 41 and 62 are objected to because of the following informalities: the terms “to support” and “the entire” in claim 41, line 12 and “said upper member” in claim 62, line 5 are underlined as if be added, however, said terms were previously added. Appropriate correction is required.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

5. Claims 41-57, 62 and 64 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrases “the shower tray comprising an upper member of sheet plastics material and a lower member of sheet plastics material” in claim 41, lines 2-3, “to support the entire floor of said well” in claim 41, lines 12-13, “the floor comprising an upper member of sheet plastics material, a lower member of sheet plastics material” in claim 62, lines 2-3 and “said upper member throughout said floor, and wherein said lower member is provided with holes” in claim

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62, lines 5-6, “a solid core that extends throughout said body between an upper member of sheet plastics material and a lower member of sheet plastics material” in claim 64, lines 3-4 and “said lower member being provided with holes on an underside of said shower tray” in claim 64, lines 8-9. Sheets may have been placed into the mold for making the upper and lower members, however, the sheets are transformed in the mold and are no longer sheets when removed from the mold. The disclosure does not disclose a plurality of holes. The disclosure does not have support for the core supporting the well. The lower member supports the well. The core is filler and is not load bearing similar to paint applied to a substrate does not support.

6. Claim 46 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 46 recites the limitation “said underneath layer” in line 2. There is insufficient antecedent basis for this limitation in the claim. There are several layers underneath the outer layer. Applicant is advised to precisely positively set forth the layers.

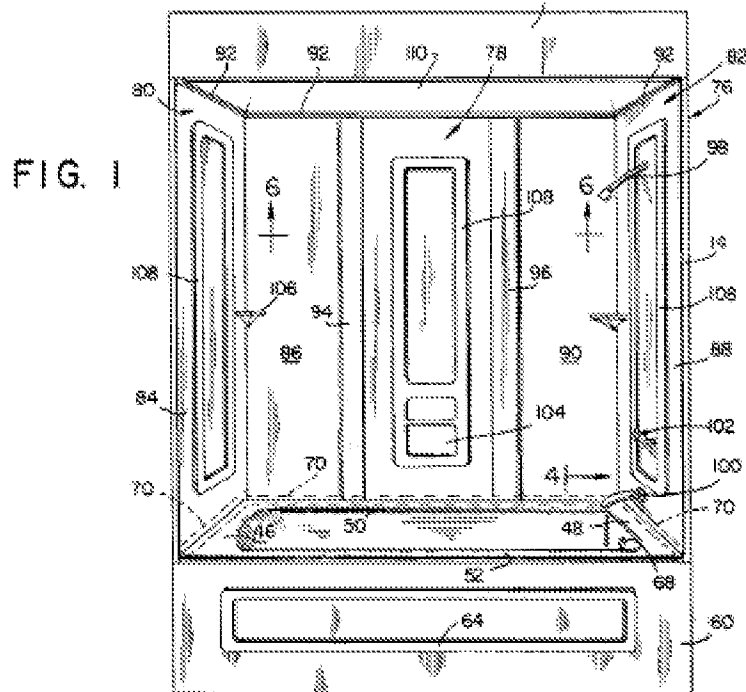
Clarification and/or correction required.

Claim Rejections - 35 USC § 103

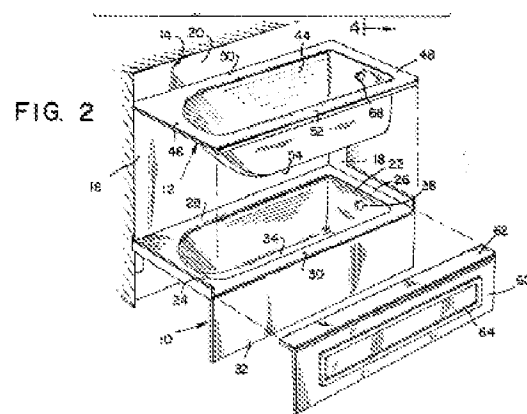
8. Claims 41-42, 44-57, 62 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altman et al. (US 4,067,071).

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Regarding claims 41, 52-56, 62 and 64, Altman ('071) teaches a composite article comprising a shower tray having a well with a floor (See col. 8, ll. 62-65 and FIG-1, entire FIG with shower head #98.),

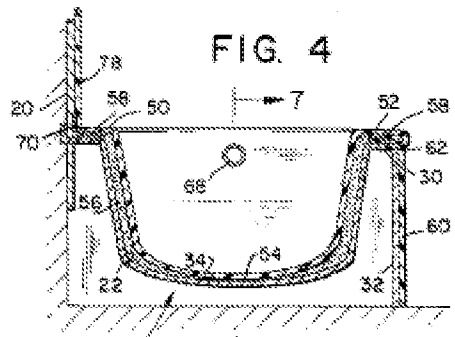


the shower tray comprising an upper member of plastics material (See col. 4, ll. 3-7 and FIG-2, #12.) and

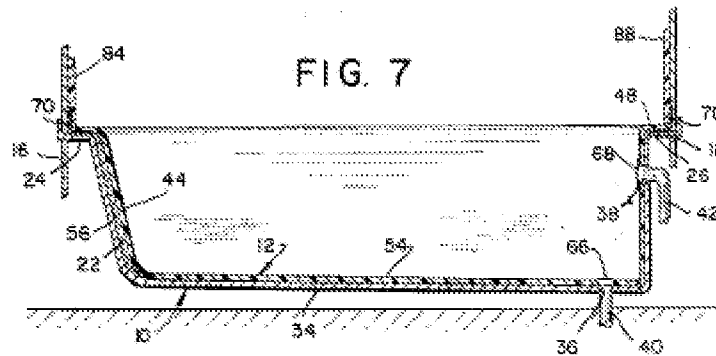


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a lower member of sheet plastics material that together form an outer shell having the upper member on a top side of the shower tray and the lower member on an underside of the shower tray, the upper member being spaced from the lower member to define a gap therebetween (See FIGs 2 and 4, lower members #60, #10 and col. 7, ll. 3-5.), and an inner core of filler extending throughout the shell between the upper member and the lower member to fill the gap to provide strength and rigidity to the shower tray (See FIGs 4 and 7, filler #56.),



the inner core being constructed and arranged to separate the upper member from the lower member to support the entire floor of the well with a means for distributing filler and with a waste hole, wherein said upper and lower members further comprise means to aid locating said members relative to one another, wherein said locating means comprise co-operating formations on said upper and lower members, wherein the lower member is provided with a means for releasing air from the gap and holes below the shower tray (See FIGs 4 and 7 and col. 6, ll. 11-17 wherein the upper/lower members are spaced with core #56 between and wherein the core supports the undersurface and drain pipe #40. Air is released where the edge of the top member meets the bottom members.),



however, fails to expressly disclose support the entire floor of the well.

However, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to support the entire upper member with the core so as to evenly distribute the load across as great a support structure as possible and to compensate for any manufacturing imperfections and/or deflections created after manufacturing and prior to installation in order to provide a structure that will not prematurely mechanically fail and be effective for its intended purpose.

Therefore, it would have been obvious to support the entire upper member with the core in order to provide a strong durable structure that will not prematurely fail.

Regarding claim 42, Altman ('071) teaches wherein the filler is a composite resin-stone mix (*See col. 5, l. 58 to col. 6, l. 4.*).

Regarding claims 44-45, Altman ('071) teaches wherein the upper member has an outer layer of hardwearing, scratch resistant material for absorbing impacts occurring during use of the article (*See col. 4, ll. 12-23.*).

Regarding claims 46-48, Altman ('071) teaches the article discussed above, however, fails to expressly disclose wherein the outer layer is an acrylic layer and said

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underneath layer is an acrylonitrile butadiene styrene layer and the ratio of the ABS to the acrylic layer is 9:1.

However, Altman ('071) teaches the upper member made of acrylonitrile butadiene styrene and acrylonitrile butadiene styrene materials are well known for use in showers/baths and articles having a thickness (*See col. 4, ll. 12-23 and col. 7, ll. 3-5.*) for the purpose of providing structures that are moldable, have smooth surfaces, and are pleasing to view (*See col. 4, ll. 12-23.*).

Therefore, it would have been obvious to use the above materials and thicknesses for the various members in order to provide a moldable, smooth and pleasing article.

Regarding claim 49, Altman ('071) teaches wherein the inner core has a variable thickness (*See FIG-4, variable thickness of #56.*).

Regarding claims 50-51, Altman ('071) teaches the article discussed above, however, fails to expressly disclose wherein sockets are provided in an underside of the lower member for receiving legs for raising the article above a surface on which it is installed.

However, Altman ('071) teaches the shower tray being supported at the periphery and the bottom member being spaced from the floor (*See FIG-7, piping #40 and FIG-4, members #32 and #20 wherein the support members can clearly receive legs by a socket attachment means.*) for the purpose of raising the article, providing spacing for the attachment of effluent piping and expansion and contraction space for the members due to the known expansion and contraction that takes places by hot and

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cold water and heavy people using the shower exerting downward forces upon the members (*See FIGs 7 and 4.*). Furthermore, it was well known at the time Applicant's invention was made to provide showers sockets/legs.

Therefore, it would have been obvious to a person having ordinary skill in the art at the time Applicant's invention was made to provide sockets/legs on the bottom of the structure in order to raise the article and provide effective piping and drainage.

Regarding claim 57, Altman ('071) teaches wherein said lower member is provided with an array of interlinked recessed (*See FIGs 4 and 7, recession for filler #56 that fills the core.*).

9. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Altman et al. (US 4,067,071) in view of Swanson (US 4,414,385).

Altman ('071) teaches wherein the resin-stone mix comprises a mixture of limestone, calcium carbonate and a catalyst (*See col. 5, l. 55 to col. 6, l. 10 and col. 4, ll. 39-55.*), however, fails to expressly disclose wherein the resin is dicyclopentadiene.

However, Swanson ('385) discloses using a dicyclopentadiene resin (*See col. 1, ll. 51-58.*) for the purpose of providing a material with superior resistance to chemical attack (*See col. 1, ll. 49-50.*).

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to provide an article with a dicyclopentadiene resin as taught by Swanson ('385) in Altman ('071) in order to provide a material with superior resistance to chemical attack. Furthermore, Applicant has not disclosed the criticality of using the DCPD resin.

ANSWERS TO APPLICANT'S ARGUMENTS

- 10.** In response to Applicant's arguments (*p. 11, para. 4 to p. 12 para. 2 of Applicant's Paper filed 2 July 2008*) regarding the new limitations, it is noted that said limitations are discussed above.
- 11.** In response to Applicant's arguments (*p. 12, para. 4 to p. 13 para. 3 of Applicant's Paper filed 2 July 2008*) regarding the means plus language, it is noted that Applicant's amendments to the claims overcomes the issues regarding such and are discussed above.
- 12.** In response to Applicant's arguments (*p. 13, para. 4 to p. 14 para. 1 of Applicant's Paper filed 2 July 2008*) regarding the composition of the lower member, it is noted that the Examiner concurs and the above rejections have been modified accordingly.
- 13.** In response to Applicant's arguments (*p. 14, para. 2 of Applicant's Paper filed 2 July 2008*) regarding the support legs, it is noted that the Examiner concurs and the above rejections have been modified accordingly.
- 14.** In response to Applicant's arguments (*p. 14, para. 3 of Applicant's Paper filed 2 July 2008*) regarding the core region, it is noted that the core gap regions are connected as illustrated by filler #56 in FIGs 4 and 7.
- 15.** In response to Applicant's arguments (*p. 14, para. 4 to p. 15, para. 1 of Applicant's Paper filed 2 July 2008*) that the bathtub and the skirt are not expressly disclosed as being made of plastic material, it is noted as discussed above that the upper member is clearly a plastic material as discussed above and it would have been

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obvious to make the skirt out of the same material since they both comprise the same surface. Furthermore, as discussed above, ABS is a well known plastic used in showers.

16. In response to Applicant's arguments (*p. 15, para. 2 to p. 18, para. 2 of Applicant's Paper filed 2 July 2008*) that the references for claim 43 are non analogous art because Swanson ('385) teaches the use of sulfur in some cement formulations and Applicant's cement does not use sulfur, it is firstly noted that Swanson's ('385) cement is the same as Applicants and whether or not Swanson ('385) may also teach other cement formulations does not make the art non analogous. Furthermore, Applicant's claims do not exclude the presence of sulfur materials. Additionally, Swanson ('385) teaches using dicyclopentadiene resin for the purpose of providing a material with superior resistance to chemical attack which exists in showers such as Altman ('071).

17. In response to Applicant's arguments (*p. 18, para. 3 to p. 19, para. 2 of Applicant's Paper filed 2 July 2008*) regarding capped ABS, it is noted that said arguments are moot since Applicant cancelled said limitations. No precise arguments are presented regarding the thickness limitations.

18. In response to Applicant's arguments (*p. 19, para. 3 to p. 20, para. 2 of Applicant's Paper filed 2 July 2008*) regarding the sockets, it is noted that the Examiner concurs and the rejections have been changed accordingly.

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T O'Hern/
Examiner, Art Unit 1794
August 20, 2008

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794